IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4892 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
RANJITSINH BAVJIBHAI GOEL & 1 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MS MAMTA R VYAS for Defendant(s) : 1,
MR MRUGEN K PUROHIT for Defendant(s) : 1,
MR HS MUNSHAW for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/06/2007

ORAL JUDGMENT

Present appeal has been filed by the appellant herein,

original opponent No.2, - New India Assurance Company Ltd. under section 32 of the Workmen Compensation Act challenging the judgment and order passed by the learned Commissioner for Workmen's Compensation, Bhavnagar dated 1-10-1997 passed in Workmen Compensation No. 21 of 1995 by which the learned Commissioner for Workmen's Compensation has directed the appellant to pay/deposit an amount of Rs.1,83,708/- towards compensation and 50% of the said amount by way of penalty along with the interest of 12% per annum.

2. Respondent No.1 herein, - original claimant was serving as a Conductor with the respondent No.2 herein Bhavnagar Municipal Corporation and he submitted the Workmen Compensation (NF) case No.21 of 95 before the learned Commissioner for Workmen's Compensation, Labour Court, Bhavnagar for compensation under the provisions of the Workmen Compensation Act alleging inter alia that while he was on duty on 16-1-95, he sustained injuries and his left leg was operated and the appellant was the insurance company with whom the vehicle was insured and in spite of the notice dated 7-4-95

to pay the compensation, the same was not paid and therefore, it was alleged that the opponents were liable to pay the penalty and the interest also. The learned Commissioner for Workmen's Compensation granted compensation considering the amendment in the Workmen Compensation Act which came into force w.e.f. 15-9-95 making the same applicable retrospectively and accordingly directed the appellant to pay the compensation considering the monthly salary as Rs.2000/- and 60% of that amount by multiplying the same by relevant factor 153.09. The learned Commissioner has also directed the appellant,-insurance company to pay the penalty which was quantified at 50% of the compensation and further directed that the amount of compensation of Rs.1,83,708/- be paid along with interest at the rate of 12% per annum. Being aggrieved by the aforesaid judgment and order, the appellant, insurance company has preferred the present first appeal.

3. The learned advocate appearing on behalf of the appellant has submitted that the appellant,-insurance company is challenging the judgment and order passed by

the learned Commissioner for Workmen's Compensation by which the appellant is saddled with the liability to pay the penalty. He has also further submitted that as the accident has taken place on 19-1-95 and the amendment in the Workmen Compensation Act has come into effect w.e.f. 15-9-95 by which instead of 6% interest, 12% interest was provided and that interest of Rs.1000/- monthly salary, Rs.2000/- monthly salary is provided, the compensation ought to have been awarded by the learned Commissioner considering the relevant provisions prior to amendment of 15-9-95 and as per the old Act, ought to have awarded the interest at the rate of 12%. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Ved Prakash Garg V. Premi Devi reported in AIR 1997 3854**, the insurance company cannot be held liable to pay the penalty as required under section 4A of the Act. Learned advocate appearing on behalf of the appellant has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Kerala State Electricity Board V. Valsala K. reported in 2000 ACJ 5**, by which it is held that the amendment in the Workmen Compensation Act with regard to compensation, interest

etc. should not be made applicable retrospectively and the amount of compensation is required to be paid considering the provisions prevailing at the time of accident. Under the circumstances, it is requested to allow the present first appeal.

4. Appeal is opposed by the learned advocate appearing on behalf of the opponents herein i.e. original claimant as well as original opponent No.1,-Bhavnagar Municipal Corporation. Ms Mamta Vyas, learned advocate appearing on behalf of the original claimant has submitted that considering the judgment of the Hon'ble Supreme Court in the case of Ved Prakash Garg(supra), if the order passed by the learned Commissioner for Workmen's Compensation directing the appellant to pay the penalty is quashed and set aside, in that case, also the claimant shall be entitled to the penalty from the employer and therefore, it is requested to make suitable observation and pass appropriate order to that effect.

Shri Munshaw, learned advocate appearing on behalf of the Corporation i.e. the employer has submitted that immediately on receipt of the notice, the insurance

company was informed to deposit the compensation and in spite of that the compensation was not deposited by the insurance company, the learned Commissioner has rightly passed an order directing the appellant,-insurance company to pay the penalty.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the accident has taken place on 16-1-95 and the learned Commissioner for Workmen's Compensation has awarded the compensation considering the amendment in the Workmen Compensation Act who has come into effect w.e.f. 15-9-1995. Considering the amendment in the Workmen Compensation Act, the learned Commissioner awarded the compensation and also awarded interest at the rate of 12% per annum. Prior to the amendment, the amount of compensation was required to be paid in the case of permanent total disability resulting from the injury, an amount equal to 50% of the monthly wages of the injured workman multiplying by relevant factor or an amount of Rs.24000/-

whichever is more and as per explanation to whether monthly wages of the workman, except Rs.1000/-, his monthly wages shall be deemed to be Rs.1000/- only. Prior to the amendment of 1995, the rate of interest was 6% per annum as per section 4A(3). The learned Commissioner in the present case awarded the compensation considering the amendment in the Workmen Compensation Act who has come into effect w.e.f. 15-9-95 and has considered Rs.2000/- as monthly wages and has also considered 60% of the monthly wages instead of 50% of the monthly wages. The learned Commissioner also awarded the compensation at the rate of 12% considering the amendment in the Act who has come into effect w.e.f. 15-9-95. Considering the judgment of the Hon'ble Supreme Court in the case of Kerala State Electricity Board (supra), the amendment in the Workmen Compensation with regard to compensation and interest cannot be made applicable retrospectively and that amount of compensation and the interest is to be paid considering the provisions at the time when accident has taken place. Under the circumstances, the judgment and order passed by the learned Commissioner awarding the compensation

considering monthly wages at Rs.2000/- and considering 60% of Rs.2000/- and awarding the interest at the rate of 12% requires to be quashed and set aside and the claimant is required to be paid the compensation considering the monthly wages at Rs.1000/- and taking 50% of Rs.1000/- multiplying by the relevant factor 153.09 which comes to Rs.76,545/-. Similarly, the order passed by the learned Commissioner awarding compensation at the rate of 12% also requires to be quashed and set aside and the original claimant will be entitled to the compensation along with interest at 6% per annum.

7. Considering the judgment of the Hon'ble Supreme Court in the case of Ved Prakash Garg, the insurance company also cannot be held liable to pay the penalty and the penalty is to be paid by the employer. Under the circumstances, the judgment and order passed by the learned Commissioner directing the appellant to pay the penalty requires to be quashed and set aside and the opponent No.2 herein (original opponent No.1),-employer is to be held liable to pay the penalty.

8. For the reasons stated above, the appeal succeeds. The judgment and order passed by the learned Commissioner for Workmen's Compensation, Bhavnagar directing the appellant to pay an amount of Rs.1,83,708/- by way of compensation is hereby quashed and set aside and it is held that the original claimant would be entitled to Rs.76,545/- by way of compensation. It is further held that the original claimant will be entitled to the aforesaid compensation along with interest at the rate of 6% per annum and to that extent, the judgment and order passed by the learned Commissioner is hereby quashed and set aside. The order passed by the learned Commissioner for Workmen's Compensation directing the appellant herein, - insurance company to pay the penalty is also quashed and set aside and it is directed to the opponent No.2 herein, Bhavnagar Municipal Corporation to pay 50% of 76,545/- amount by way of penalty and the original claimant will be entitled to recover the same from the opponent No.2 herein. The appeal is accordingly allowed. No costs.

(M.R. Shah, J.)

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